

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6974 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ALLARAKHA IBRAHIM PATHAN

Versus

G S R T C

Appearance:

MR HK RATHOD for Petitioner

MR YS LAKHANI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 28/04/98

ORAL JUDGEMENT

Rule. Mr YS Lakhani learned advocate waives service on behalf of the respondent. With the consent of the learned advocates, this petition is finally heard today.

In this petition under Article 226 of the Constitution of India the petitioner is challenging the

order of termination dated 24.11.1995 passed by the respondent no. 2 and has prayed to direct the respondent-corporation to reinstate him on the post of Peon or helper with continuity of service and full back wages, while protecting his pay. One more prayer has been made by the petitioner which is to the effect that the corporatin should consider the case of dependent of petitioner under Item no. 30 of Settlement dated 21.12.1989 and direct the respondents to appoint the dependent on the post of Class-III or IV.

The petitioner was working as a driver with the respondent-corporation was declared unfit by Medical Certificate dated 2.9.1995 and consequently on 24.11.1995 the respondent-corporation terminated the services of the petitioner by giving one month's notice.

Mr HK Rathod learned advocate for the petitioner has contended that the petitioner has put in more than 15 years service as driver and during the course of employment, he developed heart trouble and diabetic and, therefore, it is not possible for him to perform the duties of driver. Mr Rathod therefore, submitted that the petitioner is required to be absorbed to any other post of either helper or peon. Mr Rathod has alternatively submitted that if it is not possible for the respondent-corporation to absorb the petitioner, in that event, his son may be appointed in service in place of petitioner in Class-III or IV services.

The respondent no.2-corporation has filed affidavit in reply in the present case. Reading the said affidavit, it is clear that the respondent has terminated the services of the petitioner on the basis of the report dated 2.9.1995 of Civil SURgeon, Rajkot declaring the petitioner unfit for the post of Driver. It is the case of the respondent-corporation that the existing rules of the corporation do not permit any re-categorisation except in the case of driver who is being declared unfit because of eye defect and in such cases only the driver is to be put in the post of helper or peon. The respondent-corporation has relied upon the Resolution no. 547 dated 20.1.1976, wherein it is mentioned that no employees other than the driver who is suffering from eye disease can be given benefits of re-categorisation. As far as giving of compassionate appointment to the son of the petitioner is concerned, it is the say of the respondent-corporation that the son of the petitioner has made an application dated 15.6.1996, but his application cannot be considered out of turn as the applications of

similar request for the year 1994 are pending. It is, therefore, stated that the case of the son of the petitioner will be considered as and when his turn arises.

In view of these rival contentions, the only question which is required to be considered is as to whether the case of the petitioner can be considered by placing him on any other post like peon or helper. At this stage, it is necessary to refer GSO no. 503 which deals with re-categorisation. It is not in dispute that GSO has been issued by the Corporation by virtue of the powers under the Regulations and, therefore, GSO has a statutory force. Clause-94 of the GSO No. 503 which is relevant for our purpose, reads as under:

"Notwithstanding anything contained above in respect of re-categorisation, the Competent Authority may, at its discretion, allow the employee if he so desires, to be re-categorised, to a lower post in any Department/Branch provided the employee concerned is considered suitable for the lower post in another Department/Branch by the Competent Authority. Such re-categorisation shall constitute voluntary reversion."

In view of this, it is clear that the Competent Authority may allow the employee if he so desires to re-categorise to a lower post in any Department/Branch provided the employee concerned is found suitable for the lower post and such re-categorisation shall constitute voluntary reversion. There is no dispute to the fact that the petitioner has made a representation seeking re-categorisation to a lower post from driver to either helper or peon, and thus, has sought voluntary reversion. Clause-94 of the GSO thus, gives discretion to the Competent Authority to consider the request of the concerned employee to put him to the lower post and such a request of re-categorisation cannot be refused relying on the circular which has been passed by the respondent-corporation. The Supreme Court, in the case of Narendrakumar Chandla v. State of Haryana and others, reported in AIR, 1995 SC 519, has clearly laid down that "when an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties as a Carrier Attendant is unjust." Considering the facts and circumstances of the case, the Supreme Court directed the respondent to appoint the concerned man to the post of

L.D.C. protecting his pay-scale of Rs 1400-2300 and directed to pay all the arrears of salary. IN view of the ruling of the Supreme Court, I am of the view that the respondents were not justified in rejecting the request of the petitioner to post him as a helper or peon.

In the result, the petition is allowed. The respondents are directed to appoint the petitioner as a Peon with effect from 10.4.1996, i.e. the date on which he applied for the same, and place him anywhere in Rajkot Division. It is clarified that the petitioner shall be given appointment with effect from 10.4.1996 that is with respect to considering his case as far as continuity of service without back-wages but his pay shall be protected. It is further directed that as and when the turn of the son of petitioner comes for the appointment on compassionate ground, in that event, the same shall be considered and if he is selected, in that event, the petitioner will voluntarily resign as stated by Mr Rathod. The respondents are directed to pass appropriate orders within six weeks from today. Rule made absolute with no order as to costs. DS Permitted.
